Supreme Court, U. S.
FILED
MAY 10 1974
MICHAEL RODAK, JR., CLERK

# APPENDIX

IN THE

## Supreme Court of the United States

OCTOBER TERM, 1973

## No. 73-822

ERNEST FRY AND THELMA BOEHM,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

ON A WRIT OF CERTIORARI TO THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

Petition for Certiorari
Filed November 24, 1973
Certiorari Granted February 19, 1974

IN THE SUPREME COURT OF OHIO

*Fry -vs- Ferguson*, et al..
Case No. 72-102, Complaint in Mandamus
Filed Februray 10, 1972

*Fry -vs- Ferguson*, et al.
Case No. 72-102, Answer
Filed February 23, 1972

*State ex rel Boehm -vs- Leggett*, et al.
Case No. 72-194, Complaint in Mandamus
Filed March 10, 1972

*State ex rel Boehm -vs- Leggett*, et al.
Case No. 72-194, Answer
Filed April 10, 1972

*State ex rel Boehm -vs- Leggett, et al.*
Stipulation of Consolidation
Filed February 25, 1973

Oral Argument, May 9, 1973

Decision of the Supreme Court of Ohio,
dated June 20, 1973
(see Appendix E of Agreed Stipulation of Facts,
page 42)

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

*United States of America -vs- The State of Ohio*, et al.
Case No. 73-240
Motion for an Injunction Pending Final Disposition
of the Certification by the Temporary Emergency
Court of Appeals, Mailed to us on July 9, 1973

Order and Judgment on Motion for Injunction, July 9, 1973

Order certifying case to the Temporary Emergency Court of Appeals of the United States Filed in U.S. District Court on June 29, 1973, Filed with TECA on July 3, 1973

IN THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES

Motion for an Injunction Pending Final Disposition of Certification Mailed to us on July 10, 1973

Order granting injunctive relief dated July 10, 1973

Motion for additional time for oral argument, filed September 16, 1973

Oral argument in Washington, D.C. September 18, 1973

Judgment, entered October 25, 1973

IN THE SUPREME COURT OF THE UNITED STATES

Petition for Writ of Certiorari to the Temporary Emergency Court of Appeals filed November 24, 1973

Certiorari Granted, February 19, 1974



**IN THE TEMPORARY EMERGENCY COURT OF APPEALS OF THE UNITED STATES**

Docket No. 6-2

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE STATE OF OHIO, ET AL.,
Defendants.

## PLAINTIFF'S AND DEFENDANTS' AGREED STIPULATION OF FACTS

1. On January 15, 1972, the Ohio General Assembly passed Amended Substitute Senate Bill 147 (hereinafter referred to as Bill 147) which provided for wage and salary adjustments, reclassifications and step increases amounting to an average increase of 10.6 per cent for all employees affected by the bill.

2. Bill 147 provided that 10.6 per cent wage and salary increase would go into effect beginning with the pay period that included January 1, 1972.

3. At the time of its passage, Bill 147 affected approximately 65,000 employees of the State of Ohio, the State Universities and the County Welfare Departments.

4. A percentage breakdown of the State employees affected by Bill 147 is as follows:

| Job Category | % of Total Employees |
|---|---|
| Officials and Managers | 5% |
| Professional | 23% |
| Para-Professional | 8% |
| Technical | 3% |
| Auxiliary Aide | 20% |
| Office Clerical | 17% |
| Skilled | 2% |
| Semi-Skilled | 6% |
| Laborer | 6% |
| Service | 5% |

Attached hereto as Appendix A is a description of the individual job classifications included within each of the above mentioned job categories and the number of personnel, with certain exceptions, in each major state agency as of the time Bill 147 was enacted into law.

5. On February 10, 1972, the case of *State of Ohio, ex rel. Ervin* v. *Gilligan,* Case No. 72AP47, was filed in the Tenth District Court of Appeals, Franklin County, Ohio (hereinafter referred to as Court of Appeals) seeking a writ of mandamus requiring the State officials of Ohio to pay the wage and salary increases as provided for in Amended Substitute Senate Bill 147.

6. The United States filed a motion to intervene in *Ervin* which was granted without obection from the parties.

7. Between February 10 and March 22, 1972, the cases of *Fry* v. *Ferguson, State ex rel. Boehm* v. *Legatt* and *State ex rel. Kaiser* v. *Ferguson* were filed in the Supreme Court of Ohio each seeking a writ of mandamus requiring the State officials of Ohio to pay the wage and salary increases called for in Bill 147. The United States was denied the right to intervene in these cases but was granted the right to file in an *amicus curiae* brief.



8. The State of Ohio filed an application with the Pay Board asking permission to pay the wage and salary increases provided for in Bill 147 and on February 24, 1972 a public hearing on the application was held by the Pay Board.

9. The State of Ohio presented further oral and written factual statements at a Pay Board meeting held on March 2, 1972.

10. On March 6, 1972, the Pay Board by resolution acted on the application of the State of Ohio and issued its Decision and Order. (See Appendix B)

11. On March 24, 1972, the State of Ohio filed a request for reconsideration of the Pay Board's decision and order. The Pay Board denied this request on May 2, 1972.

12. On May 16, 1972 the Court of Appeals, in the *Ervin* case held a formal hearing in which the parties stipulated to all facts and in which the parties agreed to attempt to negotiate a settlement of that case.

13. On November 3, 1972, pursuant to the agreement of May 16, 1972, the state officials, defendants-respondents, agreed to file a request with the Pay Board asking that the remaining amount of the wage and salary increases called for in Bill 147 be paid to the affected state employees. These increases amounted to approximately 1.5 per cent pay increase for the members of the employee group affected. The request was filed with the Pay Board on November 10, 1972 and denied on December 19, 1972. (See letters attached as Appendix C)

14. On January 9, 1973, the State of Ohio requested a reconsideration of the Pay Board's decisions and on March 22, 1973 this request was denied.

15. On April 17, 1973, the United States filed a petition for removal of the *Ervin* case to the District Court of the

United States for the Southern District of Ohio, Eastern Division.

16. On May 29, 1973, the Court of Appeals, issued a decision in the *Ervin* case holding that the defendant State was required to make the lump sum payment to the plaintiff employees of the wage and salaries authorized by Bill 147 which had not been paid. (See Appendix D) This decision was not journalized.

17. On June 7, 1973, the United States filed for reconsideration and statement of special appearance in the Court of Appeals.

18. On June 11, 1973, the United States filed a motion for temporary restraining order in the United States District Court for the Southern District of Ohio seeking an order precluding the State officials from paying the entire appropriated money as called for in Bill 147 pursuant to the announced decision of the Court of Appeals.

19. On June 14, 1973, the District Court of the United States for the Southern District of Ohio, Eastern Division, ordered that the *Ervin* case be remanded in the Court of Appeals.

20. On June 12, 1973, the Court of Appeals denied the United States' motion for reconsideration and statement of special appearance.

21. On June 20, 1973, the Supreme Court of Ohio in the consolidated cases of *Fry* v. *Ferguson, State ex rel. Boehm v. Legatt,* and *State ex rel. Kaiser* v. *Ferguson* announced that the State officials of Ohio must pay the entire wage and salary increases as called for in Bill 147. (See Appendix E)

22. On July 2, 1973, the Court of Appeals journalized its order in the *Ervin* case and stayed the order pending appeal to the Supreme Court of Ohio.



23. The wage and salary increases that are the subject of this lawsuit are the increases that were not paid, because of the Pay Board's decision, to employees for work performed between the pay period that included January 1, 1972 and March of 1972.

24. The State employee affected by Amended Substitute Senate Bill 147 have been receiving the total wage and salary increases under Bill 147 pursuant to the Pay Board order of March 10, 1972, since March of 1972.

25. The affected employees have received no additional general wage and salary increases in any form since the enactment into law of Amended Substitute Senate Bill 147.

26. The monies representing the state employees' wage and salary increases in question, approximately $10.5 million, have been appropriated and encumbered by order of the State Controlling Board of Ohio pending payment. This money does not include the approximately five million dollars in wage and salary increases that had not been paid to university and county welfare department employees.

Respectfully submitted,

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Plant Maintenance Engineers
Policemen 1-3
Police Sergeants
Radio Technicians 1-4
Teacher 1
Vocational Instructor 1-3
X-Ray Technician 2

TECHNICIANS — Occupations requiring a combination of basic scientific knowledge and manual skill which ordinarily can be obtained through two years or more of post high school education, such as is offered in many technical institutes and junior colleges, or through equivalent training (usually formal). Includes:

Medical
Dental



Registered X-Ray
Agriculture
Air Conditioning and Refrigeration Technicians
Artists 1-2
Aviation Specialist 1
Barber Inspector 1-2
Cosmetology Inspector
Boiler Inspector
Building Inspector 1-2
EDP Technicians
EDP Computer Operator 3
EDP Specialist 1-2
EEG Technicians
EEG Specialists
Elevator Inspectors
Employment Security Technician 1-2
Field Inspectors 1-2
Identification Technicians 1-4
LPN's
Police Officers 1-3
Rehabilitation Aides 2-3
Kindred Workers

AUXILIARY AND AIDE — Includes employees in supportive type positions which are generally established to enable the professional and technical staff to concentrate on more demanding job responsibilities. Many of these positions will fall within an identified pattern of staff development. Includes:

Activities Therapist Aides
Agriculture Aide 1-2
Agriculture Inspector 1
Attendents
Community Service Worker
Correction Officer
Correction Corporal
Dental Assistant

Drivers License Examiner 1-2
EDP Computer Operator 1
Engineering Aide 1-2
Investigator 1
Laboratory Assistant
Nursing Aide 1-2
Personnel Aide
Planning Survey Technician 1-2
Psychiatric Aide Supervisor 1-3
Psychiatric Aide 1-2
Psychiatric Criminal Attendant 1-4
Right of Way Agent 1
Teacher Aide 1-3
Youth Leader 1-4
Kindred Workers

OFFICE AND CLERICAL — Includes all clerical work regardless of level difficulty where the activities are predominantly non-manual though some tasks may be involved. Includes:

Typists
Stenographers
Secretaries
Accounting Clerks 1-4
Bookkeeping Machine Operators 1-2
Cashiers 1-4
Dispatchers
EDP Data Clerks & Entry Operators
Highway Patrol Dispatchers
Mechanical Stores Clerk 1-2
Office Machine Operator 1-4
Personnel Clerks
Retail Store Clerks 1-2
Switchboard Operators
Kindred Workers



SKILLED — Manual workers of relatively high skill level who must have through and comprehensive knowledge of the process involved in their work. Exercise considerable independent judgment and usually receive an extensive period of taining or experience. Include:

Aircraft Mechanics
Auto Mechanics 2-4
Bindery Technicians
Bindery Foremen
Blacksmiths
Cabinet Makers
Carpenters
Carpenter Foremen
Compositors
Composit[illegible] Foremen
Dairyman 3
Electricians
Electrician Foremen
Leadmen
Locksmiths
Machinists
Machinists Foremen
Sheet Metal Workers
Sheet Metal Worker Foremen
Signal Electricians
Signal Electrician Supervisors
Stationary Engineer 2-3
Stationary Firemen 2
Water Sewage Treatment Operators 3
Welders
Kindred Workers

SEMI-SKILLED — Workers who operate machine or processing equipment or perform other operations of in-

termediate skill level which can be mastered in a few weeks and require limited training. Includes:

Auto Body Repairman 1
Auto Mechanics 1
Bakers 1-2
Bindery Workers
Boiler Repairmen 1-2
Barbers
Cosmetologists
Dairymen 1-2
Draftsmen 1
Dredge Operators
Elevator Maintenance Men
Equipment Operators
Fire Fighters
Food Service Supervisors
Glaziers
Highway Workers 3-4
Laundry Supervisors 1-3
Maintenance Repairmen 1-3
Meatcutters
Painters
Penal Workshop Foremen
Plasterers
Plumbers
Plumber Formen
Pressmen
Pressmen Foremen
Seamstresses 1-3
Stationary Engineer 1
Stationary Firemen 1
Tailors
Water Sewage Treatment Operator 1-2
Kindred Workers



LABORERS — Workers in manual occupations which generally require no training. Typically laborers performing elementary duties that may be in a few days and require the application of little or no independent. Includes:

Farm Laborers 1-2
Farm Foremen
Highway Workers 1-2
Laborers
Labor Foremen
Route Markers
Kindred Workers

SERVICE WORKERS — Workers in both protective service occupations. Generally, the service occupations are grouped closely to classifications but tend to require less physical effort than laborers.

Capitol Guides
Capitol Watchmen
Custodial Workers
Custodial Work Supervisors
Domestic Workers
Elevator Operators
Food Service Workers
Greenhousemen
Groundskeepers
Housekeepers
Institutional Security Officers
Laundry Workers
Power Plant Helpers
Storekeepers 1-3
Watchmen
Kindred Workers

# OHIO

## NUMBER OF STATE PERSONNEL

January, 1972

The first part of this report shows number of personnel, with certain exclusions, in each major agency of state government, for the current month, with comparative figures for earlier months.

The second part of this report shows, for each state agency and institution, the total number of persons paid from state funds, the number in each pay step, the number in each type of appointment, and the number under the state classification plan for the current month.

Data are compiled from payroll records for the last half of the month shown.

Minor variations may occur from month to month because of fluctuation in work load or changes in assignment of personnel.

JOHN J. GILLIGAN
*Governor*

DEPARTMENT OF STATE PERSONNEL
PAUL A. COREY, *Director*



## PERSONNEL STATUS BY AGENCY AS OF 01-72

| Dep Inst | Agency | SUMMARY BY STEP Total | 0 | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | By Status Cert | Prov | Unel |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 005 | Judiciary | 366 | 366 | | | | | | | | | | | | | 366 |
| 010 | Supreme Court of Ohio | 41 | 41 | | | | | | | | | | | | | 41 |
| 018 | Ohio Judicial Conference | 2 | 2 | | | | | | | | | | | | | 2 |
| 020 | Ohio State Senate | 79 | 79 | | | | | | | | | | | | | 79 |
| 025 | House of Representatives | 188 | 135 | | 6 | 18 | 13 | 14 | 2 | | | | | | | 133 |
| 030 | Legislative Ref Bureau | 11 | 11 | | | | | | | | | | | | | 11 |
| 035 | Legislative Service Comm | 44 | 44 | | | | | | | 1 | | | | | | 44 |
| 040 | Governors Office | 41 | 40 | | | 1 | | | 1 | | | | | | | 41 |
| 045 | Lieutenant Governor | 4 | 2 | | | | | | | | | | | | | 4 |
| 050 | Secretary of State | 69 | 1 | | 10 | 16 | 9 | 11 | 10 | 2 | | | | 48 | 15 | 6 |
| 055 | Attorney General | 330 | 19 | | 105 | 92 | 41 | 37 | 12 | 18 | 3 | 3 | | 92 | 55 | 183 |
| 070 | Auditor of State | 525 | 8 | 14 | 85 | 134 | 78 | 129 | 31 | 36 | 8 | 2 | | 142 | 367 | 16 |
| 090 | Treasurer of State | 108 | 1 | | 40 | 41 | 8 | 8 | 3 | 5 | 2 | | | | | 108 |
| 100 | Finance | 259 | | 1 | 49 | 52 | 58 | 54 | 8 | 19 | 10 | 8 | | 177 | 75 | 7 |
| 110 | Taxation | 758 | 18 | 16 | 133 | 138 | 123 | 229 | 47 | 28 | 22 | 3 | | 578 | 156 | 24 |
| 116 | Bd of Tax Appeals | 20 | 1 | | 4 | | 2 | 10 | 1 | 2 | | | | 9 | 5 | 6 |
| 120 | State Personnel | 170 | 9 | 7 | 74 | 32 | 19 | 14 | 8 | 1 | 6 | | | 104 | 50 | 16 |
| 124 | St Pers-Board of Review | 4 | | | 3 | | | | | 1 | | | | 1 | | 3 |
| 130 | Public Works | 460 | 6 | 22 | 40 | 55 | 66 | 122 | 48 | 69 | 26 | 5 | 1 | 350 | 102 | 8 |
| 135 | Urban Affairs | 122 | | | 45 | 43 | 19 | 10 | 3 | 2 | | | | 56 | 58 | 3 |
| 140 | Sundry Claims Board | 1 | | | | 1 | | | | | | | | | | 1 |
| 175 | Constitutional Rev. Comm | 5 | 5 | | | | | | | | | | | | | |
| 200 | Education | 447 | 195 | | 63 | 54 | 33 | 54 | 8 | 24 | 11 | 4 | 1 | 210 | 198 | 39 |
| 221 | State School for Deaf | 187 | 33 | | 33 | 24 | 26 | 29 | 15 | 11 | 11 | 1 | 2 | 128 | 26 | 33 |
| 226 | State School for Blind | 135 | 28 | | 12 | 15 | 19 | 24 | 9 | 15 | 11 | 1 | 1 | 92 | 14 | 29 |
| 233 | Sch-College Bd Registr | 2 | | | | | 2 | | | | | | | 1 | | 1 |
| 235 | Ohio Board of Regents | 17 | 9 | | 3 | 2 | | 1 | | | 1 | 1 | | | | 17 |

| Dep Inst | Agency | SUMMARY BY STEP Total | 0 | T | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | By Status Cert | Prov | Uncl |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 350 | State Library Board | 148 | 6 | | 21 | 25 | 36 | 40 | 7 | 8 | 4 | | | 1 | | | 148 |
| 370 | Ohio Arts Council | 4 | | | 2 | | 1 | | 1 | | | | | | | | 4 |
| 373 | Ohio Student Loan Comm | 9 | | 1 | 1 | 5 | 1 | 1 | | | | | | | 2 | 3 | 4 |
| 374 | Ohio Education TV Comm | 7 | | | 3 | 1 | | 1 | 1 | | | 1 | | | 5 | 1 | 1 |
| 400 | Public Welfare | 606 | 1 | 1 | 91 | 122 | 102 | 188 | 38 | 45 | 14 | 4 | | | 513 | 86 | 7 |
| 415 | Rehabilitation Serv Comm | 806 | | | 150 | 207 | 213 | 147 | 36 | 44 | 8 | | | 1 | 778 | 23 | 5 |
| 420 | Ohio S & S Orphans Home | 199 | | | 20 | 22 | 39 | 60 | 10 | 38 | 9 | 1 | | | 179 | 19 | 1 |
| 430 | Ohio S & S Home | 297 | 127 | | 23 | 20 | 55 | 35 | 21 | 14 | 2 | | | | 143 | 27 | 127 |
| 440 | Health | 766 | 6 | 13 | 167 | 135 | 94 | 182 | 73 | 65 | 25 | 5 | | 1 | 631 | 121 | 14 |
| 460 | Southeast Ohio Hospital | 82 | | | 6 | 7 | 8 | 24 | 8 | 29 | | | | | 60 | 21 | 1 |
| 470-431 | Ohio Youth Comm-Admin | 80 | | 10 | 21 | 24 | 9 | 9 | 3 | 3 | 1 | | | | 39 | 31 | 10 |
| 470-432 | Fairfield Sch for Boys | 415 | | | 37 | 69 | 76 | 120 | 38 | 47 | 24 | 1 | | 3 | 388 | 26 | 1 |
| 470-433 | Scioto Village | 244 | | | 30 | 48 | 39 | 84 | 10 | 22 | 10 | 1 | | | 231 | 12 | 1 |
| 470-434 | Juvenile Diag Center | 468 | | | 63 | 128 | 85 | 141 | 16 | 25 | 10 | | | | 448 | 18 | 2 |
| 470-435 | Trng Inst Central Ohio | 145 | | | 22 | 37 | 2[illegible] | 47 | 5 | 5 | | 1 | | 2 | 135 | 9 | 1 |
| 470-436 | Mohican Youth Camp | 78 | | | 18 | 17 | 17 | 23 | 2 | | 1 | | | | 76 | 2 | |
| 470-437 | Zaleski Youth Camp | 21 | | | | 2 | 5 | 6 | 1 | 4 | 3 | | | | 19 | 1 | 1 |
| 470-438 | Juvenile Placement Bur | 138 | | | 24 | 57 | 29 | 22 | 2 | 4 | | | | | 128 | 10 | |
| 470-439 | H. F. Christian Youth Camp | 41 | | | 1 | 13 | 10 | 17 | | | | | | | 39 | 1 | 1 |
| 470-441 | Maumee Youth Camp | 71 | | | 16 | 16 | 14 | 21 | 2 | 1 | 1 | | | | 54 | 16 | 1 |
| 470-442 | Riverview Sch for Girls | 110 | | | 25 | 28 | 22 | 31 | 1 | 3 | | | | | 105 | 4 | 1 |
| 470-443 | Zanesville Youth Camp | 24 | | | 4 | 4 | 4 | 7 | 2 | 1 | 2 | | | | 22 | 1 | 1 |
| 470-444 | Youth Comm-Title 1 Sect | 51 | | 7 | 9 | 11 | 13 | 7 | | 1 | | 1 | | 2 | 41 | 10 | |
| 470-445 | Cuyahoga Hills Boys Sch | 132 | | | 19 | 42 | 37 | 30 | 3 | | | | | 1 | 118 | 13 | 1 |
| 500-390 | M/H Business Admin | 89 | | | 11 | 23 | 19 | 16 | 7 | 8 | 5 | | | | 75 | 13 | 1 |



| | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 500-392 | M/H Admin On Aging | 12 | | | | 4 | 3 | 4 | 1 | | | | | | 12 | | |
| 500-394 | Worley Terrace Village | 33 | | | 1 | 1 | 10 | 18 | 1 | 2 | | | | | 32 | 1 | |
| 500-395 | Glendale Terrace Village | 8 | | | | 5 | 1 | 2 | | | | | | | 8 | | |
| 500-425 | M/H General Adm | 66 | | 1 | 7 | 6 | 7 | 25 | 9 | 7 | 4 | | | | 41 | 24 | 1 |
| 500-426 | Support Bureau | 85 | | | 11 | 12 | 7 | 29 | 8 | 17 | 1 | | | | 68 | 12 | 5 |
| 500-427 | Paramedical Center | 37 | | | 5 | 6 | 10 | 14 | 2 | | | | | | 22 | 14 | 1 |
| 505-393 | Psychiatric Criminology | 16 | | | 2 | 3 | 5 | 5 | 1 | | | | | | 12 | 4 | |
| 505-417 | Chillicothe Research Ctr | 39 | | | 8 | 7 | 10 | 12 | | 1 | 1 | | | | 34 | 3 | 2 |
| 505-419 | Junction City Center | 106 | | | 16 | 25 | 16 | 23 | 9 | 14 | 2 | 1 | | | 102 | 3 | 1 |
| 510-403 | M/H Central Office Corr | 47 | 1 | | 11 | 11 | 7 | 7 | 2 | 2 | 6 | | | | 25 | 20 | 2 |
| 520-415 | Adult Parole Authority | 255 | | | 53 | 60 | 45 | 63 | 9 | 23 | 2 | | | | 189 | 66 | |
| 520-404 | London Correctional Inst | 270 | | | 29 | 26 | 20 | 47 | 38 | 103 | 5 | 1 | 1 | | 254 | 15 | 1 |
| 520-405 | Lebanon Correctional Inst | 292 | | | 32 | 32 | 54 | 52 | 55 | 62 | 4 | 1 | | | 253 | 38 | 1 |
| 520-406 | Ohio Penitentiary | 474 | 5 | | 61 | 72 | 94 | 103 | 51 | 84 | 4 | | | | 461 | 7 | 6 |
| 520-407 | Ohio State Reformatory | 430 | | | 47 | 63 | 59 | 80 | 75 | 99 | 6 | 1 | | | 378 | 51 | 1 |
| 520-410 | Ohio Womens Reformatory | 153 | | | 8 | 22 | 16 | 85 | 8 | 11 | 3 | | | | 148 | 4 | 1 |
| 520-413 | Marion Correctional Inst | 270 | | | 13 | 21 | 26 | 45 | 40 | 122 | 3 | | | | 255 | 14 | 1 |
| 520-416 | Chillicothe Corr Inst | 411 | | | 42 | 81 | 74 | 160 | 33 | 19 | 2 | | | | 379 | 30 | 2 |
| 520-418 | Southern Ohio Pen | 19 | | | 9 | 6 | | 2 | 1 | 1 | | | | | 13 | 5 | 1 |
| 610 | Cntrl Office Mental Hyg | 311 | 77 | 7 | 67 | 61 | 43 | 25 | 8 | 9 | 8 | 1 | | 5 | 95 | 27 | 189 |
| 610-472 | Cleveland Psych Inst | 298 | | | 38 | 46 | 49 | 85 | 32 | 44 | 3 | | 1 | | 264 | 31 | 3 |
| 610-481 | Rollman Psych Inst | 185 | | | 24 | 31 | 35 | 40 | 23 | 30 | 1 | | 1 | | 174 | 10 | 1 |
| 630-467 | Fairhill Mtl Hlth Ctr | 253 | | | 49 | 37 | 60 | 61 | 26 | 18 | 1 | | 1 | | 224 | 28 | 1 |
| 630-479 | Health Ctr | 199 | | | 44 | 25 | 34 | 54 | 15 | 27 | | | | | 179 | 18 | 2 |
| 630-480 | Woodside Receiving Hosp | 215 | | | 19 | 34 | 35 | 68 | 24 | 31 | 4 | | | | 193 | 17 | 5 |
| 640-468 | Portsmouth Rec Hosp | 136 | | | 16 | 18 | 27 | 40 | 20 | 15 | | | | | 124 | 10 | 2 |
| | Sagamore Hills Child Psy | 146 | | 1 | 31 | 36 | 30 | 28 | 11 | 8 | 1 | | | | 128 | 13 | 5 |

| Dep Inst | Agency | SUMMARY BY STEP Total | 0 | T | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | By Status Cert | Prov | Uncl |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 640-475 | Dayton Child Psych Hosp | 142 | | | 30 | 43 | 23 | 18 | 11 | 15 | 1 | | 1 | | 131 | 10 | 1 |
| 640-482 | Col Children Psych Hosp | 34 | | | 8 | 6 | 8 | 10 | | 2 | | | | | 25 | 8 | 1 |
| 650-452 | Athens Mtl Hlth Ctr | 561 | | | 70 | 67 | 91 | 149 | 84 | 95 | 4 | | | 1 | 526 | 30 | 5 |
| 650-453 | Cambridge State Hospital | 857 | | 1 | 59 | 82 | 133 | 221 | 186 | 172 | 3 | | | | 829 | 22 | 6 |
| 650-454 | Cleveland State Hospital | 688 | 3 | | 97 | 101 | 109 | 183 | 72 | 114 | 9 | | | | 605 | 64 | 19 |
| 650-455 | Columbus State Hospital | 806 | | 11 | 172 | 116 | 105 | 160 | 86 | 147 | 7 | 1 | 1 | | 753 | 45 | 8 |
| 650-456 | Dayton Mental Health Ctr | 724 | 2 | | 135 | 123 | 144 | 164 | 65 | 85 | 6 | | | | 635 | 66 | 23 |
| 650-457 | Hawthornden State Hosp | 621 | | | 115 | 98 | 97 | 157 | 70 | 78 | 6 | | | | 543 | 75 | 3 |
| 650-458 | Lima State Hospital | 566 | | | 104 | 51 | 54 | 125 | 54 | 172 | 4 | 2 | | | 528 | 32 | 6 |
| 650-459 | Longview State Hospital | 902 | 6 | 14 | 117 | 104 | 146 | 232 | 86 | 190 | 6 | 1 | | | 815 | 75 | 12 |
| 650-460 | Massillon State Hospital | 742 | | | 100 | 118 | 101 | 170 | 141 | 104 | 8 | | | | 696 | 37 | 9 |
| 650-462 | Tiffin State Hospital | 403 | | | 61 | 49 | 73 | 108 | 44 | 65 | 3 | | | | 372 | 18 | 13 |
| 650-463 | Toledo Mental Health Ctr | 827 | | | 127 | 121 | 124 | 217 | 98 | 135 | 5 | | | | 763 | 55 | 9 |
| 650-466 | Springview Hospital | 100 | | | 11 | 15 | 20 | 47 | 3 | 3 | 1 | | | | 87 | 11 | 2 |
| 660-461 | Mt Vernon State Inst | 352 | | | 34 | 43 | 67 | 86 | 41 | 79 | 2 | | | | 338 | 11 | 3 |
| 660-490 | Apple Creek State Inst | 714 | | | 119 | 113 | 107 | 187 | 88 | 92 | 6 | 1 | | 1 | 663 | 48 | 3 |
| 660-491 | Columbus State Inst | 864 | 13 | 2 | 145 | 119 | 123 | 168 | 101 | 162 | 31 | | | | 816 | 30 | 18 |
| 660-492 | Orient State Institute | 931 | 4 | | 147 | 120 | 99 | 222 | 165 | 159 | 15 | | | | 880 | 41 | 10 |
| 660-493 | Broadview Center | 212 | | | 53 | 50 | 43 | 60 | 4 | 1 | | 1 | | | 170 | 38 | 4 |
| 660-498 | Mtl Retard-Cntrl Office | 72 | | | 21 | 21 | 13 | 11 | 3 | 2 | | | | 1 | 48 | 23 | 1 |
| 660-499 | Gallipolis State Inst | 800 | | | 77 | 72 | 93 | 161 | 131 | 261 | 4 | 1 | | | 772 | 22 | 6 |
| 700 700 | Agriculture | 512 | 1 | | 93 | 81 | 165 | 79 | 22 | 48 | 18 | 5 | | | 164 | 334 | 14 |
| 710 710 | Agricultural Res Center | 717 | 426 | | 19 | 47 | 55 | 79 | 29 | 59 | 3 | | | | 79 | 191 | 447 |



| | | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 723 723 | Ohio Expositions Comm | 85 | 3 | | 20 | 19 | 22 | 18 | | 2 | 1 | | | | 61 | 14 | 10 |
| 725 725 | Natural Resources | 1198 | 3 | 1 | 169 | 197 | 241 | 308 | 57 | 168 | 38 | 14 | | 2 | 583 | 595 | 20 |
| 740 740 | Nat. Resources-Wildlife | 352 | 1 | | 19 | 27 | 88 | 89 | 56 | 55 | 9 | 7 | | 1 | 236 | 113 | 3 |
| 745 745 | Adjutant General | 250 | 4 | | 27 | 36 | 30 | 58 | 22 | 62 | 9 | | | 2 | 139 | 39 | 72 |
| 761 761 | Highway Safety Adm | 34 | | 1 | 7 | 7 | 1 | 9 | 1 | 7 | 1 | | | | 20 | 7 | 7 |
| 762 762 | Bur of Motor Vehicle | 532 | | | 115 | 92 | 72 | 131 | 28 | 77 | 16 | | | 1 | 399 | 127 | 6 |
| 764 764 | State Highway Patrol | 1973 | | 64 | 213 | 214 | 247 | 713 | 366 | 150 | 5 | 1 | | | 1583 | 382 | 8 |
| 770 770 | Highway Department | 9651 | 63 | 16 | 1487 | 870 | 1331 | 2339 | 1197 | 1585 | 682 | 74 | 3 | 4 | 7047 | 2460 | 144 |
| 795 795 | Bureau Employment Serv | 4210 | 18 | 99 | 969 | 934 | 508 | 810 | 405 | 373 | 72 | 14 | 3 | 5 | 3764 | 408 | 38 |
| 800 800 | Commerce | 273 | 1 | | 24 | 52 | 52 | 95 | 18 | 18 | 13 | | | | 198 | 35 | 40 |
| 810 810 | Development | 120 | 1 | | 41 | 35 | 18 | 15 | 5 | 2 | 2 | 1 | | | 25 | 19 | 76 |
| 820 820 | Insurance | 79 | 4 | | 5 | 18 | 13 | 30 | 2 | 5 | 2 | | | | 47 | 22 | 10 |
| 830 830 | Industrial Relations | 209 | | 16 | 13 | 20 | 26 | 58 | 12 | 48 | 9 | | | | 140 | 51 | 18 |
| 845 845 | Industrial Commission | 279 | 4 | 1 | 28 | 38 | 49 | 73 | 48 | 24 | 10 | 2 | 1 | | 161 | 11 | 106 |
| 855 855 | Bureau of Workmens Comp | 725 | 4 | 4 | 140 | 120 | 122 | 200 | 52 | 68 | 10 | 2 | 1 | 2 | 642 | 74 | 9 |
| 870 870 | Public Utilities Comm | 150 | | | 46 | 18 | 23 | 20 | 7 | 23 | 10 | 3 | | | 3 | | 147 |
| 874 874 | Regulatory Licensing Bds | 131 | | | 32 | 14 | 18 | 38 | 11 | 13 | 5 | | | | 54 | 29 | 48 |
| 875 875 | Ohio State Racing Comm | 20 | 1 | | 6 | 3 | 2 | 3 | | 1 | 1 | | 1 | 2 | 7 | 5 | 8 |
| 876 876 | Ohio Civil Rights Comm | 55 | 1 | | 18 | 14 | 7 | 11 | 1 | 2 | 1 | | | | 35 | 14 | 6 |
| 896 896 | Ohio Water Devp Auth | 14 | 6 | | 4 | 3 | 1 | | | | | | | | | | 14 |
| 897 897 | Housing Development | 2 | 1 | | 1 | | | | | | | | | | | | 2 |
| 898 898 | Air Quality Devp Auth | 5 | 5 | | | | | | | | | | | | | | 5 |
| 960 960 | Liquor Control | 1993 | 9 | | 306 | 328 | 318 | 555 | 143 | 282 | 21 | 9 | 2 | 20 | 1686 | 285 | 22 |
| | STATE TOTALS | 49678 | 1860 | 331 | 7736 | 7351 | 7429 | 11769 | 5016 | 6563 | 1353 | 187 | 20 | 63 | 38352 | 8030 | 3296 |

| AGENCY | CURRENT MONTH Jan. 1972 | LAST MONTH Dec. 1971 | YEAR AGO Jan. 1971 | TWO YEARS AGO Jan. 1970 |
|---|---|---|---|---|
| Judicial | | | | |
| Judiciary | 366 | 365 | 357 | 363 |
| Supreme Court | 41 | 41 | 37 | 35 |
| Judicial Conference | 2 | 2 | 2 | 0 |
| Sub Total | 409 | 408 | 396 | 398 |
| Legislative | | | | |
| Senate | 79 | 83 | 79 | 95 |
| House of Representatives | 188 | 186 | 180 | 168 |
| Legislative Reference Bureau | 11 | 11 | 13 | 8 |
| Legislative Service | 44 | 45 | 53 | 41 |
| Sub Total | 322 | 325 | 325 | 321 |
| Elective | | | | |
| Governors Office | 41 | 38 | 29 | 8 |
| Lieutenant Governor | 4 | 4 | 6 | 4 |
| Secretary of State | 69 | 70 | 71 | 66 |
| Attorney General | 330 | 323 | 245 | 258 |
| Auditor of State | 525 | 529 | 480 | 532 |
| Treasurer of State | 108 | 110 | 87 | 112 |
| Sub Total | 1,077 | 1,074 | 918 | 980 |



| | | | | |
|---|---|---|---|---|
| Departments | | | | |
| Adjutant General | 250 | 246 | 250 | 244 |
| Agriculture | 512 | 505 | 468 | 465 |
| Commerce | 273 | 276 | 286 | 291 |
| Development | 120 | 112 | 100 | 114 |
| Education | 710 | 707 | 725 | 1,222 |
| Employment Services | 4,210 | 4,112 | 3,812 | 3,233 |
| Finance | 259 | 247 | 247 | 236 |
| Health | 848 | 827 | 767 | 729 |
| Highway | 9,651 | 9,693 | 9,447 | 10,089 |
| Highway Safety | 2,539 | 2,459 | 2,488 | 2,415 |
| Industrial Relations | 209 | 209 | 162 | 226 |
| Insurance | 79 | 78 | 82 | 89 |
| Liquor Control | 1,993 | 2,630 | 2,100 | 2,083 |
| Mental Hygiene & Correction | 16,773 | 16,665 | 16,744 | 16,546 |
| Natural Resources | 1,550 | 1,467 | 1,650 | 1,543 |
| Personnel | 170 | 157 | 112 | 113 |
| Public Welfare | 606 | 589 | 588 | 688 |
| Public Works | 454 | 434 | 480 | 503 |
| Taxation | 758 | 707 | 648 | 654 |
| Urban Affairs | 122 | 116 | 119 | 98 |
| Workmen's Compensation | 725 | 717 | 713 | 708 |
| Sub Total | 42,811 | 42,953 | 41,988 | 42,289 |

| AGENCY | CURRENT MONTH Jan. 1972 | LAST MONTH Dec. 1971 | YEAR AGO Jan. 1971 | TWO YEARS AGO Jan. 1970 |
|---|---|---|---|---|
| Boards | | | | |
| Agriculture R & D Center | 717 | 743 | 731 | 710 |
| Building Standards | 0 | 0 | 92 | 12 |
| Library | 148 | 144 | 146 | 153 |
| Mine Examining | 0 | 0 | 3 | 3 |
| Personnel Review | 4 | 4 | 4 | 4 |
| Regents | 17 | 15 | 15 | 14 |
| Regulatory and Licensing | 131 | 125 | 131 | 129 |
| Soldiers & Sailors Home | 170 | 166 | 171 | 168 |
| Soldiers & Sailors Orphans Home | 199 | 200 | 201 | 205 |
| School & College Registration | 2 | 2 | 2 | 0 |
| Sundry Claims | 1 | 2 | 0 | 1 |
| 20 Tax Appeals | 20 | 19 | 21 | 20 |
| Veterinary | 0 | 0 | 0 | 0 |
| Water Develop. Auth. | 14 | 9 | 6 | 5 |
| Air Quality | 5 | 5 | 0 | 0 |
| Housing Dev. | 2 | 3 | 0 | 0 |
| Sub Total | 1,430 | 1,437 | 1,523 | 1,424 |



| | | | | |
|---|---|---|---|---|
| Commissions | | | | |
| Arts Council | 4 | 4 | 4 | 4 |
| Civil Rights | 55 | 53 | 57 | 49 |
| Educational Television | 7 | 7 | 6 | 4 |
| Exposition | 85 | 87 | 85 | 68 |
| Industrial | 278 | 279 | 290 | 156 |
| Public Utilities | 150 | 139 | 130 | 136 |
| Racing | 20 | 20 | 22 | 17 |
| Rehabilitation Serv. | 806 | 809 | 803 | 0 |
| Safety & Hygiene | 0 | 0 | 0 | 119 |
| Student Loan | 9 | 9 | 9 | 7 |
| Tax Study | 0 | 0 | 0 | 0 |
| Voc. & Tech. Educ. | 0 | 0 | 1 | 1 |
| Youth | 2,018 | 2,026 | 2,075 | 2,034 |
| Const. Rev. | 5 | 5 | 0 | 0 |
| Sub Total | 3,437 | 3,438 | 3,482 | 2,595 |
| GRAND TOTAL | 49,486 | 49,635 | 48,632 | 47,998 |
| Et. under civil service | 46,382 | 46,561 | 45,622 | 44,953 |
| Causal workers, student help, inmate labor, etc.* | 192 | 192 | 176 | 195 |

* Not included in Grand Total, above.

## APPENDIX B

## DECISION AND ORDER
### Application of State of Ohio

March 10, 1972

Employee Unit: Ohio State Employees
IRS #: 316-01347
PB #: 1-17-045

The above case is before the Pay Board as a request by the State of Ohio for an exception to the general wage and salary standard. The State of Ohio requests permission to pay wage and salary increase pursuant to legislation finally enacted subsequent to November 13 covering in excess of 50,000 state employees. Following filing of the original application representatives of applicant were in frequent cnotact with Board staff members and applicant submitted amended applications in which significant factual changes, deletions, additions and modifications were made. A public hearing on the application was held by the Board on February 24, 1972. Applicant requested and was permitted to make further oral and written factual statements at a meeting of the Board on March 2, 1972 when submission of the matter was finally completed. At its next following meeting on March 6, 1972 the Board by resolution acted on the application and directed issuance of the following decision. On the basis of the oral and written submissions of the applicant and the Board's analysis thereof, the Board finds and concludes as follows:

1. That the increase in wages and salaries requested is in excess of the general wage and salary standard (5.5%).



2. That the increase in wages and salaries requested is in excess of maximum permissible annual aggregate wage and salary increase (7%) permitted for exception pursuant to subsection 201.11 (a) (1), (2), and (3) of the regulations.

* * * * * * *

to pay practice the appropriate current wage year of which would be November 14, 1971 to November 13, 1972.

4. That the aggregate percentage of wage and salary increases in the three years preceding November 14, 1971, has been sufficiently less than the sum of a percentage increase of 7 percent for each of the three years to entitle the applicant to pay an annual aggregate increase of 7 percent pursuant to the limitations of subsections 201.11 (a) (3) (ii), and (iii) and 201.11 (b) of the regulations.

5. That there is insufficient credible evidence submitted to warrant the granting of an exception in excess of 7 percent on the basis of any of the additional criteria for exceptions under subsections 201.11 (d) of the regulations.

6. That because of the particular circumstances of the instant case, which include a biennial state budget, extensive legislative history, and enactment of appropriations and new revenues, it could create a hardship to require the employer to implement the wage and salary increase retroactively in order to avail the employees of the full amount permissible under the Board's regulations.

7. That payment of the wage and salary increase submitted to the Board for approval would, if paid on and after March 17, 1972, result in the same aggregate payments as a 7 percent increase paid for the full wage year.

Now, therefore, it is ordered that the application for an exception is denied to the extent that the requested wage and salary increase is in excess of seven percent (7%) for the current wage year computed pursuant to the policies and regulations of the Pay Board. The applicant is prohibited from making payment of the wage and salary increase until the Chairman determines that the increase to be paid does not exceed the limitations of subsections 201.11 (a) (3) (iii) and (b) of the regulations. The applicant may submit and the Chairman will approve payment of a wage and salary increase up to the amount submitted to the Board which is "placed in effect no earlier than March 17, 1972." On or after November 14, 1972, the applicant will be permitted to institute payment of any remainder of the requested increase or any additional increase upon application to the Board and determination by the Chairman that any such remainder or additional increase is not greater than that authorized by Pay Board Regulations then in effect. The permissible rate for wage and salary increases to take effect during the wage year commencing November 14, 1972 shall be reduced to the extent that any wage and salary increases paid after March 17, 1972 exceed seven percent computed pursuant to the policies and regulations of the Board.

/s/ GEORGE H. BOLDT
*Chairman*



## APPENDIX C

**STATE OF OHIO**
**DEPARTMENT OF STATE PERSONNEL**
**COLUMBUS, OHIO 43215**

November 30, 1972

The Honorable George H. Boldt
Chairman
Pay Board
Office of Economic Stablization
2025 M Street, N.W.
Washington, D.C. 20508

Dear Judge Boldt:

In conjunction with our recently filed application (case numbers 998-2-1, 2886-2-1) for approval of a pay adjustment, we are asking the Pay Board to approve the merging of two previously separated employees units, i.e., a) the classified civil service employees of the university system, and b) the already merged unit of state and county welfare department employees.

We propose the merger of these for the following reasons:

1) All of the employees' salaries within this unit are determined by Chapter 143 of the Ohio Revised Code, i.e., all persons in the same classification will make the same wage irrespective of the unit in which they are employed.
2) In the legislative process, the pay table is considered to be applicable to all units.
3) All systems have improved their personnel information system allowing a rapid exchange of in-

formation for computations of the P.B.-3 which was not possible when these units came before the Pay Board previously. The university employee unit does not include the faculty which is subject to a different pay schedule.

If the two units were considered separately, then the percentage increase for the state and county welfare department employees would be 1.5 while the percentage increase for the university classified service would be 1.4. This difference is caused by different mean salaries in these units.

Should you require any further information, please do not hestitate to call upon us. We hope that the issue can be resolved quickly.

Sincerely,

/s/ PAUL A. COREY

PAC:es:ac



**PAY BOARD**
**Washington, D.C. 20508**

Dec 19, 1972

Paul A Corey
Director of State Personnel
State of Ohio
Columbus, Ohio 43215

Re: Pay Board Case Numbers 02386-2-1
00998-2-1

Dear Mr. Corey:

This is in response to your communication of November 10, 1972, in which you request Pay Board approval to pay to a unit of approximately 76,251 State, County Welfare, and University Civil Service employees or former employees a lump-sum payment, which you have calculated at 1.6%, for work performed by these employees between December 26, 1971, and the date on which such employees in fact received pay increases in 1972.

The Pay Board has determined that under its regulations such payment would constitute deferred compensation for work performed in the first control year applicable to such employees, which is November 14, 1971, through November 13, 1972. Such payment would cause the total wage and salary increases for the first control year to exceed the maximum permissible annual aggregate wage and salary increase under the terms of the Pay Board's Decision and Order of March 10, 1972. The Pay Board has therefore determined that the proposed lump-sum payment may not be paid. A wage and salary increase for the second control year, which begins November 14, 1972, may be paid only on the basis of work performed on and after that date. The Pay Board will

consider applicatiosn for approval of pay adjustment for employees of the State of Ohio, with respect to the second control year, upon submission.

Since the proposed payment has been disapproved, it is not considered necessary at this time to issue a determination as to the merger of appropriate employee units proposed in your correspondence of November 30, 1972. This request may be renewed in conjunction with an application for approval of a pay adjustment for the second control year.

Sincerely,
/s/ ROBERT W. KOPP
*General Counsel*



## APPENDIX D

State of Ohio, ex rel.

JAMES C. ERVIN,
RAYMOND P. WOODS,
661 Salisbury Road, Box 135,
Waverly, Ohio 45690,
ALBERT HERBORT,
470 Pamela Circle,
Mainville, Ohio 45039,
PAUL HUDSON,
76 East Fifth Street,
London, Ohio 43140,
GENEVA WATSON,
1211 Walbridge Avenue,
Toledo, Ohio 43609,
WILLIE FLUCKERS,
10623 Grandview Avenue,
Cleveland, Ohio 44104,
RICHARD M. KLINE,
1669 Grace Street,
Mansfield, Ohio 44905,
FRANCIS STOVER,
Route 1, Box 1,
Bidwell, Ohio 45614,
BENJAMIN R. FORTNEY,
Route #1, Box 279,
Guysville, Ohio 45735,
GARY YARBROUGH,
Route 1, Box 169,
Bremen, Ohio 43107,
BEV ANN SEELY,
1337 Cottage Place, N. W.,
Canton, Ohio 44703,

JACK ROBERTSON,
Route #4,
Cambridge, Ohio 43725,
SANDY MARTIN,
BUD HULLINGER,
626 North Jefferson Street,
Lima, Ohio 45801,
WILBUR JUDY,
488 South Prospect Street,
Marion, Ohio 43302,
GEORGIA SANDERS,
686 Gholson Avenue,
Cincinnati, Ohio 45229,
JACKIE COOPER,
3433 Hallwood Place,
Cincinnati, Ohio 45229,
LLOYD DANNER,
Route #2,
Ashville, Ohio 43103,
ALICE M. ALFORD,
4958 East 85th Street,
Garfield Heights 44125,
FLORENCE MIX,
3673 East 146th Street,
Cleveland, Ohio 44120,
ROY WILLIAMS,
13805 Union Avenue,
Cleveland, Ohio 44120,
RICHARD FOX,
Lot #6, Locust Lanes Trailer Court,
Weston, Ohio 43569,
DOROTHY BABUS,
123609 Crennell Avenue,
Cleveland, Ohio 44105,



RICHARD DAVISSON,
Route #1,
Mt. Perry, Ohio 43760,
JAMES MCCUDDY,
1220 West Centerville Road,
Dayton, Ohio 45459,
BENNY AYERS,
4836 Scenic Drive, Route 5,
Ravenna, Ohio 44266,
BILL MOORE,
5820 K-Bell Street,
Oxford, Ohio 45056,
WANDA LEWIS,
P. O. Box 271,
East Turner Drive,
Wilberforce, Ohio 45384,
MOLLY DUNCAN,
11816 Avon Avenue,
Cleveland, Ohio 44105,
OSCAR MCGEE,
8 Clinton Street,
The Plains, Ohio 45780,
LARRY ROWLEY,
2638 Erie Street,
Toledo, Ohio 43611,
DAVID POPE,
1630 Holyroad,
Cleveland, Ohio 44106,
and
State Employes Union, Council 21, American Federation of State, County and Municipal Employees, AFL/CIO, who bring this action on behalf of themselves and all others similarly situated,

Plaintiffs-Relators,

v.

JOHN J. GILLIGAN,
*Governor of Ohio,*
JOSEPH FERGUSON,
*Auditor of the State of Ohio,*
PAUL A. COREY, *Director,*
Department of Personnel,
State of Ohio,
HAROLD A. HOVEY, *Director,*
Department of Finance,
State of Ohio,
L. C. STEPHENS, *Director,*
Department of Personnel,
The Ohio State University,
WARD WILSON, *Director,*
Department of Personnel,
Ohio University,
Athens, Ohio,
PAUL W. MOSHER, *Director,*
Department of Personnel,
Kent State University,
Kent, Ohio,
EDWARD A. JACKSON, *Director,*
Department of Personnel,
Miami State University,
Oxford, Ohio,
FRED MABRA, *Director,*
Department of Personnel,
Central State University,
Wilberforce, Ohio,
DONALD BALTHAZAR, *Director,*
Department of Personnel,
Toledo State University,
Toledo, Ohio,



TED PURVIS, *Director,*
Department of Personnel,
Wright State University,
Dayton, Ohio,
and
IRVIN E. HAZEL, *Director,*
Department of Personnel,
Cleveland State University,
Cleveland, Ohio,
Defendants-Respondents.
(United States of America,
Intervenor-Respondent.)

**No. 72AP-47**

**DECISION**
**Rendered on May 29, 1973**

Mr. LEONARD S. SIGALL, 6500 East Main Street, Reynoldsburg, Ohio 43068, For Plaintiffs-Relators.

Mr. WILLIAM J. BROWN, Attorney General.

Mr. C. RAYMOND MARVIN and

Mr. ROBERT B. MEANY, Assistants, Statehouse Annex, Columbus, Ohio, For Defendants-Respondents.

Mr. STEPHEN R. PICARD, United States Department of Justice, Economic Stabilization Section, Civil Division, Room 3736, Department of Justice, Washington, D. C. 20530, For Intervenor-Respondent.

STRAUSBAUGH, J.

This matter is before us upon relators' complaint for the issuance of a peremptory and a final writ of mandamus filed February 10, 1972, and set down for oral hearing May 16, 1972, at which time the cause was continued for one month until June 16, 1972, for the filing of stipulation of facts and briefs. Thereafter, by reason

of inaction of the parties, this court gave notice that unless dispostive action be taken before March 30, 1973, under our Court Rule 11, Section 14, the cause would be dismissed for want of prosecution. Thereafter, at the request of the parties, a conference was held between the parties and the court wherein it was agreed that the parties would submit briefs; that a reply brief would be submitted five days thereafter. At that time, on April 6, 1973, all evidence being stipulated, this court requested that the parties direct their attention specifically to the following two questions: (1) What provision of the Economic Stabilization Act of 1970 makes the act applicable to salaries paid by a sovereign state to officers and employees of state government established by legislative act? (2) What provisions of executive order 11695 accomplishes that purpose?

Ancillary to those questions, assuming an affirmative answer, we asked that two other questions be briefed: (1) Does the Tenth Amendment preclude the federal government from regulating the salaries of officers and employees of state government? (2) Is there any improper delegation of authority in executive order 11695? Instead of filing a brief as requested, the attorney for the United States of America, on April 19, 1973, filed in this court a copy of the petition for removal of the action in this case to the United States District Court for the Southern District of Ohio, Eastern Division, which petition was filed in that court.

The Economic Stabilization Act of 1970 provides, in paragraph 211, Judicial Review:

> "(a) The district courts of the United States shall have exclusive original jurisdiction of all cases or controversies arising under this title, or under regulations or orders issued thereunder, notwithstanding



> the amount in controversy; except that nothing in this subsection or in subsection (h) of this section affects the power of any court of competent jurisdiction to consider, hear, and determine any issue by way of defense (other than a defense based on the constitutionality of this title or the validity of action taken by any agency under this title) raised in any proceeding before such court. If in any such proceeding an issue by way of defense is raised based on the constitutionality of this title or the validity of agency action under this title, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of Chapter 89 of Title 28, United States Code."

Chapter 89 of Title 28, United States Code, provides:

> "§1446. *Procedure for removal.* (a) A defendant or defendants desiring to remove any civil action or criminal prosecution from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action.
> "(b) The petition for removal of a civil action or proceeding shall be filed within twenty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within twenty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.
> "If the case stated by the initial pleading is not removable, a petition for removal may be filed with-

in twenty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.
"(c) The petition for removal of a criminal prosecution may be filed at any time before trial."

Under the above procedure for removal, the petition attempted by the attorney for the United States on April 19, 1973, was a nullity for failure to be timely filed, the case previously having been submitted to this court for determination of the merits upon the stipulated facts. A petition for removal cannot be made between the time of trial and decision.

Although not controlling, a review of the legislative history of P. L. 92-210, as contained in Volume 2, United States Code, Congressional and Administrative News, is helpful. Under "Judicial Review" at page 2292 we note the following:

"The judicial review provision has been written with several important principles in mind: (1) speed and consistency of decisions in cases arising under the Act, (2) avoidance of any breaks or stays in the operation of the Stabilization Program, and (3) relief for particular persons aggrieved by the operation of the program.
"Exclusive original jurisdiction over cases and controversies arising under the Act or under regulations or orders issued under the Act shall be in the Federal district courts. These cases may be brought regardless of the amount in controversy. It is made explicit, however, that with respect to any case or controversy bought in a court of competent jurisdiction, e.g., a State court, nothing shall prevent a defendant from raising a defense (other than a defense involving constitutionality of the Act or the



validity of a regulation or order issued under the Act). If the defense is simply one concerning the applicability of a regulation to a party such case would state in the State court, the issue of the applicability could be decided in that court, and appeals would proceed through the procedure established for that court. If either of the two issues mentioned above, constitutionality of the Act or validity of a regulation or order issued under the Act, are raised, no court, other than a Federal district court, has jurisdiction to act upon a case involving these issues. Such case should be subject to a motion to dismiss or similar motion. If it is so dismissed, either party to the action may move to remove the case to Federal district court for further action. This removal would be pursuant to the existing removal statutes in Chapter 89 of title 28 of the United States Code."

Again, at page 2294, *supra*, we find the following:

"Finally, the provisions of this section 211 apply to actions pending in any court, Federal or State, on the date of enactment of this section in which no final order or judgment has been rendered. It is understood by the Committee that most of the cases now in State courts involve the applicability of regulations to particular pay situations. Such cases, under this section, would remain in the State court system."

We find, therefore, under paragraph 211 of the Economic Stabilization Act of 1970, that since no defense based upon the constitutionality of Title II, Cost of Living Stabilization, or the validity of action taken by any agency under this title has been raised, the power of the Ohio courts, the original jurisdiction of the Common Pleas Court as the trial court, and this court on appeal, has not been affected in considering, hearing and de-

termining the issues herein. Furthermore, the procedure relating to time for removal having not been properly followed under Chapter 89 of Title 28, U. S. Code, this court will proceed to decide the case. The law being so explicit, except for the purpose of achieving further delay, it is difficult to understand the purpose for the filing of the petition for removal.

The issue presented is whether state officials can refuse to obey state law.

An examination of the complaint and brief of plaintiffs-relators in mandamus indicates that nowhere do relators challenge the constitutionality of any action taken under the Economic Stabilization Act of 1970. Instead, relators claim that executive order 11695 abolished the pay board, thereby ending mandatory control under Phase II. In addition, relators claim that the act never specifically included state employees, which they claim makes it "now absolutely clear that at the present time there exists no mandatory wage control over the wages of state employees." Relators further claim that Section 3 (d) (ii) of executive order number 11695 refers to a "prospective increase in prices, rents, wages or salaries under the terms of a contract * * *" and that the wages under consideration herein do not rise under the terms of a *contract*. Relators further contend that the pay bill enacted in January 1972 was a liability incurred prior to the effective date of executive order 11695 and, therefore, not a retroactive increase in wages or salaries.

Article I, Section 8, of the Constitution of the United States provides:

> "The Congress shall have Power to * * * provide for the * * * general Welfare of the United States; * * *
> "* * *



> "To regulate Commerce with foreign Nations, and among the several states, * * *
> "* * *
> "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all the Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Amendment X provides:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the Station, are reserved to the States respectively, or to the people."

It might first be questioned what power has been granted to the United States Congress or the executive branch of the United States Government to regulate the wages and salaries which a state can pay its employees. However, we need not be faced with that problem here because we find no provision whereby Congress or the executive order thereunder specifically or expressly referred to employees of state or local governments.

If Congress had intended to make the Act apply to state employees, the Act would have so stated.

Again referring to the legislative history as contained in Volume 2, U. S. Code, Congressional and Administrative News, *supra:*

> "Another consideration was whether the Committee should exempt from the Act all firms below a certain size and wage contracts applying to employee groups below a certain size as well as all firms and future wage contracts of those whose prices or wage increases in the past year have been below the guidelines which have thus far been established by the Pay Board and the Price Commission. Specific exemptions which were considered included:

"* * *

"(D) Pay adjustments which apply to or affect employees of State or local governments;

"* * *

"The Committee agreed that there may be many firms and employees in these categories which have not contributed to inflationary prices and wages. However, it was agreed also that such exemptions could lead to abuses which could not be controlled without Congressional action repealing the exemptions. Moreover, the Committee included in its bill the requirement that standards to serve as a guide for determining levels of wages, salaries, prices, rents, interest rates, corporate dividends, and similar transfers shall be generally fair and equitable and call for generally comparable sacrifices. The granting of broad exemptions from the legislation could make it impossible for the administering agencies to meet these criteria. The Committee, therefore, did not exempt these specific segments of the economy from the Act."

Although the aforesaid Congressional Committee considered specifically exempting pay adjustments which apply to or affect employees of state governments, for certain reasons it did not do so. On the other hand, there is no indication that the Committee even *considered* specifically *including* this category of employees.

On April 18, 1973, the United States Supreme Court held, in Case 71-1021, *Employees of The Department of Public Health and Welfare, State of Missouri et al.*, v. *Department of Public Health and Welfare, State of Missouri, et al.*, reported in 41 Law Week 4493, that the extension of the Fair Labor Standards Act to include state employees working in schools and hospitals does not authorize a Missouri employees' Federal District Court suit for overtime pay due them under Section



2116(b), since the Act does not deprive Missouri of its Eleventh Amendment immunity. Justice Douglas, speaking for the court, said at page 4495:

> "Where employees in state institutions, not conducted for profit, have such a relation to interstate commerce that national policy, of which Congress is the keeper, indicates that their status should be raised, Congress can act. And when Congress does act, it may place new or even enormous fiscal burdens on the States. *Congress acting responsibly would not be presumed to take such action silently.* * * *"
>
> (Emphasis added.)

Here, in the absence of express direction that the Act applies to state employees, there is the presumption that Congress and the executive branch intended that the Act *not* apply. Else, as Justice Douglas said, "Congress * * * would not be presumed to take such action silently."

The action taken by the 109th General Assembly of the State of Ohio in Amended Substitute Senate Bill 147 was a legislative act by a sovereign state; in the absence of express direction by Congress or the executive branch acting under Congressional authority, such state legislative action cannot be controlled. For the foregoing reasons, a final writ of mandamus shall be issued directing defendants-respondents to effectuate Amended Substitute Senate Bill 147.

*Writ of mandamus granted.*

TROOP, P. J., and WHITESIDE, J., concur.

## APPENDIX E

JANUARY TERM, 1973 [34 Ohio St. 2d

Counsel for Parties.

[THE STATE, EX REL.] FRY, *v.* FERGUSON, AUDITOR OF STATE, ET AL.

THE STATE, EX REL. BOEHM, *v.* LEGATT, TREASURER, OHIO STATE UNIVERSITY, ET AL.

THE STATE, EX REL. KAISER, *v.* FERGUSON, AUDITOR OF STATE, ET AL.

[Cite as State, ex rel. Fry, v. Ferguson (1973), 34 Ohio St. 2d 252.]

*State employees—Compensation—Statutory rate—R. C. 143.10(A)—Duty of state officials to pay—Federal Economic Stabilization Act of 1970—Applicability—Federal administrative board regulations ineffective, when—Mandamus—Availability.*

Mandamus will lie to compel the responsible officials to pay classified state employees at the rates of pay provided by statute. (R. C. 143.10(A).)

(Nos. 72-102, 72-194 and 72-233—Decided June 20, 1973.)

IN MANDAMUS.

Relators in these three cases are classified employees of the state of Ohio. They seek the issuance of writs of mandamus to compel the respondents to pay them, retroactive to January 1, 1972, the full amount of salary provided for their respective pay ranges and steps under R. C. 143.10(A). At the time of filing these actions, relators were being paid at an hourly rate less than that provided in R. C. 143.10(A).

The officials, statutorily responsible for paying the salaries of classified state employees, are respondents.



*Messrs. Lucas, Prendergast, Albright, Gibson, Brown & Newman, Mr. John A. Brown,* and *Mr. Jerry L. Riseling,* for relators.

*Mr. William J. Brown,* attorney general, *Mr. Robert B. Meany, Messrs. Vorys, Sater, Seymour & Pease, Mr. Duke W. Thomas* and *Mr. Jacob E. Davis, II,* for respondents.

O'NEILL, C. J. Relators contend, and respondents admit, that the laws of Ohio impose a clear legal duty upon the respondents to pay relators the full salary which they demand in this action.

Respondents, however, argue that they are unable to comply with the Ohio law because "the law of Ohio has been superseded by federal law * * *." The federal law to which respondents refer is the Economic Stabilization Act of 1970, as amended. Pub. L. No. 91-379, 84 Stat. 799; Pub. L. No. 91-588, 84 Stat. 1468; Pub. L. No. 92-8, 85 Stat. 13; Pub. L. No 92-15, 85 Stat. 38; Pub. L. No. 92-8, 85 Stat. 13; Pub. L. No. 92-15, 85 Stat. 38; Pub. L. No. 92-210, 85 Stat. 743.

Section 202(a) of that Act authorizes the President "* * * to issue such orders and regulations as he may deem appropriate to stabilize prices, rents, wages, and salaries at levels not less than those prevailing on May 25, 1970 * * *."

On October 16, 1971, the President established a Pay Board "* * * composed of fifteen members" which " * * * shall perform such functions with respect to the stabilization of wages and salaries as the [Cost of Living] Council delegates to the Board." Exec. Order No. 11,627, 3 C. F. R. 587 (Supp. 1972). Following that executive order, the Pay Baord adopted regulations concerned, *inter alia,* with "pay stablization."

Section 201.10 of those regulations, in pertinent part, provided:

"Effective on and after November 14, 1971, the general wage and salary standard (hereinafter referred to as the 'standard') is established as 5.5 pecent. The stnard shall apply to any wage and salary increase payable with respect to an appropriate employee unit pursuant to an employment contract entered into or modified onor after November 14, 1971, or to a pay practice established, modified or administered with discretion on or after November 14, 1971. Except as otherwise provided in the Regulations under this title or by decision of the Pay Board, the standard shall be used to compute the maximum permissible wage and salary increase." 6 C. F. R.46 (Supp. 1972).

Also, Section 101.28 of the regulations of the Costof Living Council provided:

"* * * Approval, however, must be granted by the Pay Board for any pay adjustment in excess of 5.5 percent which affects the employees of state and local governments." 6 C. F. R. 7 (Supp. 1972).

On January 20, 1972, the Governor of Ohio signed into law S. B. No. 147, amending R. C. 143.10(A), which provided pay increases for classified state employees retroactive to January 1, 1972. At that time the above cited regulations of the Pay Board and Cost of Living Council were in effect.

The pay increase provided through the amendment to R. C. 143.10(A) exceeded the 5.5 percent standard established by the Cost of Living Council and the Pay Board. For that reason, respondents sought Pay Board approval to pay the salaries established in R. C. 143.10 (A). The Pay Board, by its Chairman, George H. Bold, ordered, on March 10, 1972, that:

"* * * The applicant is prohibited from making payment of the wage and salary increase until the Chairman



determines that the increase to be paid does not exceed the limitations of subsections 201.11(a) (3) (iii) and (b) of the regulations.[1] The applicant may submit and the Chairman will approve payment of a wage and salary increase up to the amount submitted to the Board which is 'placed in effect no earlier than March 17, 1972.' * * * The permissible rate for wage and salary increases to take effect during the wage year commencing November 14, 1972 shall be reduced to the extent that any wage and salary increases paid after March 17, 1972 exceed seven percent computed pursuant to the policies and regulations of the Board."

Ostensibly as a result of Chairman Boldt's directive, respondents failed to pay realtors their full statutory salaries prior to March 17, 1972.

These cases present difficult and sensitive questions respecting the jurisdictions of the state and federal governments to regulate salaries of state employees. Those questions are rendered all the more difficult where, as here, the law of one jurisdiction is clear and unequivocal, while the law of the other jurisdiction is not.

The law of Ohio plainly imposes upon respondents the duty to pay relators at the rates provided in R. C. 143.10 (A). See R. C. 115.35, 113.07 and 143.39. The Economic Stabilization Act of 1970, to the contrary, does not clearly authorize the regulation of state employees' salaries. Nowhere in that Act, or its various amendments, are state employees specifically included for the salary regulation, nor is this court aware of a decision of any other court so applying that Act to state employees.[2]

Therefore, the question presented here is whether a federal administrative body may lawfully assert jursidic-

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[1] The referred to subsections provided for a maximum permissible annual aggregate wage and salary increase not to exceed 7 percent.

[2] Federal employees' salaries are, for the most part, specifically exempted from regulation under the rules of the Cost of Living Council. 6 C. F. R. Sections 101.31 and 101.35 (Supp. 1972).

tion over the salaries of state employees without clear authorization from the Congress. Stated another way, the question is whether a federal administrative body may use its general regulatory and rule-making powers to prevent enforcement of state statutes establishing the salaries of state employees where the Congress has failed to specifically authorize such prevention.

This court's view of the Constitution of the United States and decisions of the United States Supreme Court interpreting that document, both of which this court is bound to follow, indicate that a federal administrative body lacks jurisdiction to prevent enforcement of otherwise valid state statutes establishing the compensation for classified state employees in the absence of clear authorization from the Congress acting under a specific power granted by the Constitution.

As the Supreme Court noted in *Parker* v. *Brown* (1943), 317 U. S. 341, 351:

"* * * In a dual system of government in which, under the Constitution, the states are sovereign, save only thority. an unexpressed purpose to nullify a state's control ove its officers and agents is not lightly to be attributed to Congress."

See, also, *California* v. *Zook* (1949), 336 U.S. 725, 733, where the Supreme Court stated that " * * * normally congressional purpose to displace local laws must be clearly manifested"; and *Penn Dairies* v. *Milk Control Comm.* (1943), 318 U. S. 261, 275, where the Supreme Court stated that "* * * An expressed purpose of Congress to set aside statutes of the states regulating their internal affairs is not lightly to be inferred and ought not to be implied where the legislative command, read in light of its history, remains ambiguous."

For the foregoing reasons, this court holds that respondents erred in following the directives of the Pay



Board. This was in contravention of a clear legal duty under state law to pay relators at the rates provided in R. C. 14310(A).

Respondents argue that these actions should be dismissed for failure by relators to join the Pay Board and Cost of Living Council as parties. Respondents assert that, otherwise, they will be "* * * subject to a substantial risk of either being enjoined, fined, or both should they be ordered by this court to make payment of the wage increases."

Under the circumstances of these cases, it is this court's view that the federal law regulating the pay of state employees does not supersede the state statute. Therefore, it is unnecessary to join any federal agencies as parties.

The writs of mandamus are allowed.

*Writs allowed.*

HERBERT, CORRIGAN, STERN, CELEBREZZE, W. BROWN and P. BROWN, JJ., concur.